



## CITY OF BANNING STAFF REPORT

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Emery Papp, Senior Planner

**MEETING DATE:** September 10, 2024

**SUBJECT:** Continued Consideration of Proposed Banning Point Project, a Proposed Subdivision of Approximately 47 Gross Acres of Vacant Land into Three Parcels (Tentative Parcel Map No. 38164) and Construction of a Proposed 619,959 Square Foot Industrial Warehouse Building, Including 10,000 Square Feet of Office Space and a Combined 34,000 Square Feet of Retail/Commercial Buildings (Design Review No. 21-7008), on Real Property Located Within the Boundaries of the Sun Lakes Village North Specific Plan Area (APN: 419-140-057), and Proposed Addendum Prepared for the Project Pursuant to the California Environmental Quality Act

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### **RECOMMENDATION:**

Staff recommends that the City Council:

1. Consider the Project Applicant's request to conduct a new public hearing on the proposed Project and direct staff to notice the Project for a new public hearing; OR
2. Consider the Project Applicant's request to conduct a new public hearing on the Project and determine not to hold a new hearing but to continue with its consideration of, and deliberation on, the Project, and:
  - a. Adopt Resolution 2024-150, approving Tentative Parcel Map No. 38164 (the subdivision of land only), denying Design Review No. 21-7008, and adopting an Addendum under the California Environmental Quality Act (CEQA) prepared for the Project; OR
  - b. Adopt Resolution 2024-149, approving Tentative Parcel Map No. 38164 and Design Review No. 21-7008 (collectively, the "Project"), and adopting an Addendum under the California Environmental Quality Act (CEQA) prepared for the Project; OR
  - c. Adopt Resolution 2024-151, denying Tentative Parcel Map No. 38164 and Design Review No. 21-7008, and finding the Project exempt from CEQA.

### **BACKGROUND:**

Tentative Parcel Map (TPM) No. 38164 (Attachment No. 1) and Design Review (DR) No. 21-7008 (Attachment No. 2) propose to subdivide approximately 47.11 gross acres of vacant land located within the Sun Lakes Village North Specific Plan (SLVNSP) area into three commercial/industrial lots to accommodate the construction of a 619,959 square foot industrial warehouse building (the "Project" or the "Banning Point Project"), including a 10,000 square-foot integrated office component. The Project also proposes six new retail/commercial buildings collectively totaling approximately 34,000 square feet (sf), which range in size from 1,600 sf to 8,400 sf. One of the three parcels would remain undeveloped and is not a part of the Design Review application for the Banning Point Project. The Project would be intended to be constructed in two phases. Phase 1 would consist of the construction of the industrial building. Phase 2 would consist of the construction of the retail/commercial buildings.

The Planning Commission voted on December 1, 2021, to approve DR No. 21-7008 and recommend approval of TPM No. 38614 to the City Council (see Attachment Nos. 9 and 10 to 7-9-24 City Council meeting staff report attached as Attachment 3), and the City Council approved the Project on February 17, 2022, by way of adoption of Resolution No. 2022 -14 (see Attachment No. 11 to 7-9-24 City Council meeting staff report). The Pass Action Group (PAG) filed a lawsuit to challenge approval of the Project. (Pass Action Group v. City of Banning, et al., Riverside County Superior Court Case No. CVRI2201482.) The lawsuit alleged that the City failed to provide a fair hearing due to alleged bias by certain Councilmembers. The lawsuit also contended that the City violated the California Environmental Quality Act (CEQA) and the City's General Plan in approving the Project, and that the findings in support of the Project were not supported by substantial evidence.

Following briefing and a hearing on the merits, the trial court issued a ruling finding only that the City did not provide a fair hearing based on the court's conclusion that then-Councilmember Mary Hamlin was biased in favor of the Project (see Attachment No. 14 to 7-9-24 City Council meeting staff report). The court rejected all claims of bias as to Councilmember Wallace and Councilmember Sanchez, stating in its ruling that "their statements do not overcome the presumption that they are unbiased. There has been no showing of a financial or personal interest in the Project and no specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias...." The court also rejected the entirety of PAG's substantive challenges, finding that the City fully complied with CEQA, that the Project is consistent with the City's General Plan, and that the City's findings were supported by substantial evidence, as discussed further below. As the court concluded in its ruling, the court "does not find that Petitioner [PAG] has carried its burden of proof on any remaining issue and would not grant the writ but for the fair hearing issue."

The court entered judgment and issued a writ of mandate directing the City to set aside the prior Project approval and to reconsider the Project without the participation of Councilmember Hamlin (Attachment No. 4).

On July 9, 2024, the City Council adopted Resolution 2024-113 to set aside and vacate the prior Project approvals, consistent with the writ of mandate issued by the court. Also on July 9, 2024, the City Council conducted a public hearing on the proposed Project consistent with the writ of mandate (without the participation of now-former Councilmember Hamlin), received public comment, and closed the public hearing. Following discussion and deliberation the City Council continued the item and their deliberation and directed staff to prepare a resolution for the Council's consideration at a future meeting that (1) approves TPM No. 38164, (2) denies DR No. 21-7008, and (3) adopts the Addendum prepared for the Project.

On July 25, 2024, the City received a letter from Rick Friess with Allen Matkins Leck Gamble Mallory & Natsis LLP, sent on behalf of the owners of the property comprising the Project - Sun Lakes Highland, LLC ("SLH") (Attachment No. 5). The letter requests that the City Council:

1. Vacate and set aside all action taken and direction given by the City Council to staff at the July 9 hearing regarding Agenda Item 7.1, including the direction to have staff prepare a resolution for denial of the Design Review component of the Project entitlements; and
2. Reschedule the Project for a new hearing at which the City Council will reconsider the Project entitlements without the participation of Councilmembers Flynn and Happe.

On August 29, 2024, the City received a letter from Kevin Bundy with Shute, Mihaly & Weinberger LLP, sent on behalf of PAG (Attachment No. 6). The letter responds to Mr. Friess' July 25, 2024 letter and requests that the City Council deny both Tentative Parcel Map (TPM) No. 38164 and Design Review (DR) No. 21-7008, and requests that the City Council direct staff to conduct additional environmental review on the proposed Project.

On September 4, 2024, the City received a memorandum from SLH (Attachment No. 7). The memorandum responds to comments that were made in opposition to the Project during the July 9, 2024 City Council public hearing. The information presented in the memorandum is a restatement of information that the Applicant has previously provided to the Planning Commission and to the City Council, including during the July 9, 2024 public hearing.

### **JUSTIFICATION:**

City staff has brought this item back to the City Council for continued discussion, deliberation, and action. A detailed summary of the Project can be found in the July 9, 2024 City Council staff report and its attachments and is not repeated in this staff report. Additionally, written comments received on the Project during the July 9, 2024 public hearing can be found as attachments to the adopted July 9, 2024 regular City Council meeting minutes (Attachment No. 13).

The City Council closed the public hearing on the Project on July 9, 2024, and after some discussion and deliberation, directed staff to prepare a resolution for the Council's consideration at a future meeting that (1) approves TPM No. 38164, (2) denies DR No. 21-7008, and (3) adopts the Addendum prepared for the Project.

In light of the communications received from both the Applicant and the Appellant since the July 9, 2024 City Council meeting, staff has prepared three resolutions for the City Council's consideration once the Council resumes its deliberations following the receipt of public comment.

It remains staff's recommendation that the City Council approve the Project for the reasons stated in the July 9, 2024 City Council staff report. Should the City Council determine to approve the Project, the Council may adopt Resolution 2024-149, approving TPM No. 38164 and DR No. 21-7008, and adopting an Addendum under CEQA (Attachment Nos. 8, 9, and 14). The Addendum is attached as Attachment 7 to the July 9, 2024 City Council meeting staff report, which report is attached here as Attachment No. 3.

However, for the Council's ease of reference, the Addendum has also been attached separately to this staff report as Attachment No. 14.

Consistent with the City Council's direction given on July 9, 2024, staff has also prepared Resolution 2024-150 for the Council's review and consideration, which would approve TPM No. 38164 (only the subdivision of the Project site), deny DR No. 21-7008, and adopt an Addendum under CEQA related to the approval of TPM No. 38164 (Attachment Nos. 10, 11, and 14). In this circumstance, adoption of the Addendum would be necessary to satisfy CEQA before TPM No. 38164 could be approved. The facts supporting findings for denial of DR No. 21-7008 include facts articulated by Councilmembers Minjares, Flynn, and Happe on July 9, 2024.

As part of the Council's deliberations, staff recommends that the City Council first consider the Project Applicant's request to conduct a new public hearing on the proposed Project and consider the Appellant's response to the Applicant's request. The City Council could choose to direct staff to notice the Project for a new public hearing. Alternatively, the City Council could determine to continue with its consideration of, and action on, the Project.

Should the City Council decide to continue with its consideration of the Project and take action on the Project, the Council should adopt one of the following resolutions:

1. Resolution 2024-149, approving Tentative Parcel Map No. 38164 and Design Review No. 21-7008 (collectively, the "Project"), and adopting an Addendum under the California Environmental Quality Act (CEQA) prepared for the Project; **or**
2. Resolution 2024-150, approving Tentative Parcel Map No. 38164, denying Design Review No. 21-7008, and adopting an Addendum under the California Environmental Quality Act (CEQA) prepared for the Project; **or**
3. Resolution 2024-151, denying Tentative Parcel Map No. 38164 and Design Review No. 21-7008,

and finding the Project exempt from CEQA.

**FISCAL IMPACT:**

The Project applicant has asserted that if the direction provided by the City Council following the July 9, 2024 public hearing on the Project is followed by the City Council, the City will be exposed to litigation, including significant monetary and other liability. The Appellant has responded to those claims in the August 29, 2024 letter.

**ALTERNATIVES:**

1. Direct staff to notice a new public hearing on the Project.
2. Adopt Resolution 2024-149 (Approving TPM No. 38164; Approving DR No. 21-7008, Adopting Addendum).
3. Adopt Resolution 2024-150 (Approving TPM No. 38164; Denying DR No. 21-7008; Adopting Addendum).
4. Adopt Resolution 2024-151 (Denying TPM No. 38164; Denying DR No. 21-7008; Exemption Determination).
5. Provide alternative direction to staff.

**BUDGETED?:**

No

**CONTRACT/AGREEMENT:**

No

**ATTACHMENTS:**

1. [TPM No. 38164.pdf](#)
2. [DR\\_21-7008\\_Plans.pdf](#)
3. [July 9, 2024 CC SR w\\_attachments.pdf](#)
4. [2024-03-15\\_Order\\_re\\_Writ\\_of\\_Mandate.pdf](#)
5. July 25, 2024 Letter from Project Applicant
6. August 29, 2024 Letter from Appellant
7. September 4, 2024 Memorandum from Project Applicant
8. [Resolution 2024-149, Banning Point.docx](#)
9. [Exhibit A to Reso 2024-149 - COA.docx](#)
10. [Resolution 2024-150, Banning Point " Approval of TPM and Denial of DR](#)
11. [Exhibit A to Reso 2024-150 - COA](#)
12. [Resolution 2024-151, Banning Pointe " Denial of TPM and DR](#)
13. [2024 07 09\\_Minutes\\_Regular Meeting.pdf](#)
14. [Addendum\\_Consistency\\_Checklist.pdf](#)